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Subject: Submission to Plan Change 1 to The HWRRP
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Kia ora koe,

Please find attached a submission to Plan Change 1 to the Hurunui and Waiau River Regional Plan by Te Runanga o Ngai Tahu.

Nga mihi

Lisa

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Te Rūnanga o NGĀI TAHU

**Resource Management (Form, Fees and Procedure) Regulations –
Schedules 2003
SUBMISSION ON PLAN CHANGE 1 TO THE HURUNUI AND WAI AU RIVER REGIONAL
PLAN**

31 May 2019

To: Plan Change 1 to the HWRRP
Environment Canterbury
PO Box 345
Christchurch 8140
Submission lodged by email – mailroom@ecan.govt.nz

Name of person making submission:

Te Rūnanga o Ngāi Tahu (Te Rūnanga)

These are submissions in support or opposition to: Plan Change 1 to the Hurunui and Waiau River Regional Plan.

1. Introduction and Background

- 1.1 Ngāi Tahu is Tangata Whenua of Canterbury Region. Ngāi Tahu means “people of Tahu”. Ngāi Tahu is the iwi comprised of Ngāi Tahu Whānui; that is the collective of the individuals who descend from the five primary hapū; Ngāti Kurī, Ngāti Irakehu, Kati Huirapa, Ngāi Tūāhuriri and Ngāi Te Ruahikihiki. The Ngāi Tahu takiwā extends over 80 per cent of Te Waipounamu. Te Waipounamu has been home to Ngāi Tahu for over 800 years.
- 1.2 Te Rūnanga o Ngāi Tahu (Te Rūnanga) is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and was established as a body corporate on 24th April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (the Act).
- 1.3 Te Rūnanga note for the Canterbury Regional Council the following relevant provisions of the Act:

Section 3 of the Act States:

“This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.”

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Section 15(1) states:

“Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.”

- 1.4 The Charter of Te Rūnanga o Ngāi Tahu established under the Act constitutes Te Rūnanga as the kaitiaki of the tribal interests.
- 1.5 Te Rūnanga respectfully requests that Canterbury Regional Council accord this response the status and weight due to the tribal collective, Ngāi Tahu whānui, currently comprising over 60,000 members, registered in accordance with section 8 of the Act.
- 1.6 Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui “for all purposes”, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.
- 1.7 It should be noted that in Section 15 (2) of the Act, the provision provides for; where any enactment requires consultation with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngāi Tahu Whānui, be held with Te Rūnanga o Ngāi Tahu. Section 15 (3) of the Act requires that in carrying out any consultation Te Rūnanga o Ngāi Tahu shall in turn consult with Papatipu Rūnanga. In practice, Te Rūnanga takes into account the views of Papatipu Rūnanga when determining its position. In the case of issues of local significance only, Te Rūnanga may defer a response completely to Papatipu Rūnanga.
- 1.8.1 Papatipu Rūnanga are defined in section 9 of the Act. This includes Te Rūnanga o Kaikōura, and Te Ngāi Tūāhuriri Rūnanga.
- 1.8.2 This submission is from Te Rūnanga o Ngāi Tahu in consultation with the representative bodies of the tangata whenua who hold mana whenua in their traditional takiwā across the Canterbury Region, to which this proposed Plan Change relates: Te Rūnanga o Kaikōura, and Te Ngāi Tūāhuriri Rūnanga.

2. Te Rūnanga Interests in Plan Change 1

- 2.1. Te Rūnanga notes the following particular interests in Plan Change 1:

Treaty Relationship

- Te Rūnanga o Ngāi Tahu have an expectation that the Crown will honour Te Tiriti o Waitangi (the Treaty) and the principles upon which the Treaty is founded. Environment Canterbury, as the delegated representative of the Crown, is required to take into account the principles of the Treaty of Waitangi in exercising its functions.
- Te Rūnanga is reliant upon Council decision-makers understanding the Treaty context in which they operate and the need to uphold Crown responsibilities that have been delegated to them. The Productivity Commission summed up this extension of the Treaty relationship in its 2013 report Towards Better Local Regulation:

“if the Crown chooses to delegate to local authorities responsibility for the control of natural resources, it must do so in terms which require local authorities to afford the same degree of protection as is required by the Treaty to be afforded by the Crown.” [p179]

- The Waitangi Tribunal Ngāi Tahu Report 1991 investigated the “nine tall trees” of Te Kerēme (Wai 27, the Ngāi Tahu claim), namely the eight regional purchases of Ngāi Tahu lands over two decades between 1844 and 1864, and Ngāi Tahu claims to mahinga kai resources (the “ninth tree”). This was the culmination of a claims process unfolded over 140 years. Section 4.7.11 of the 1991 Report records the following excerpt from the Court of Appeal ruling of Sir Robin Cooke:

“the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable.”¹

Kaitiakitanga

- In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in ensuring sustainable management of natural resources, including protection of taonga species and mahinga kai for future generations
- Ngāi Tahu whānui are both users of natural resources, and stewards of those resources. At all times, Te Rūnanga is guided by the tribal whakataukī: “mō tātou, ā, mō kā uri ā muri ake nei” (*for us and our descendants after us*).

Whanaungatanga

- Te Rūnanga has a responsibility to promote the wellbeing of Ngāi Tahu whānui and ensure that the management of Ngāi Tahu assets and the wider management of natural resources supports the development of iwi members.

- 3.2 Te Rūnanga has a specific interest in this plan change by virtue of the Ngāi Tahu Claims Settlement Act 1998 (the NTCSA). The Act provides for Ngāi Tahu and the Crown to enter an age of co-operation. An excerpt of the Act is attached as Appendix One, as a guide to the basis of the post-Settlement relationship, which underpins this response.
- 3.3 The Crown apology to Ngāi Tahu is a recognition of the Treaty principles of partnership, active participation in decision-making, active protection and rangatiratanga.
- 3.4 With regards to the Ngāi Tahu takiwā, Section 5 of the Te Rūnanga o Ngāi Tahu Act 1996 statutorily defines the Ngāi Tahu takiwā as those areas “south of the northern most boundaries described in the decision of the Māori Appellate Court ...” which in effect is south of Te Parinui o Whiti on the East Coast and Kahurangi Point on the West Coast of the South Island.
- 3.5 Section 2 of the Ngāi Tahu Claims Settlement Act 1998 statutorily defines the Ngāi Tahu claim area as being:

the area shown on allocation plan NT 504 (SO 19900), being—

- a) *the takiwā of Ngāi Tahu Whānui; and*
- b) *the coastal marine area adjacent to the coastal boundary of the takiwā of Ngāi Tahu Whānui; and*
- c) *the New Zealand fisheries waters within the coastal marine area and exclusive economic zone adjacent to the seaward boundary of that coastal marine area;— and, for the purposes of this definition, the northern sea boundaries of the coastal marine area have been determined using the equidistance principle, and the northern sea boundaries of the exclusive economic zone have been determined using the perpendicular to the meridian principle from the seaward boundary of*

¹ *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641

the coastal marine area (with provision to exclude part of the New Zealand fisheries waters around the Chatham Islands).

[Refer map attached as Appendix Two]

- 3.6 The Canterbury Region is within the Ngāi Tahu takiwā.

5. Submission – General

Te Rūnanga submission is:

- 5.1 The mauri of the Hurunui, Waiau Uwha and Jed Catchments is degraded and needs to be improved. Te Rūnanga support Plan Change 1 in as far as it goes to maintain current water quality, except where we ask for specific amendments or additions in Appendix 3.

Te Rūnanga reasons are:

- 5.2 The amendments and additions Te Rūnanga seek to this plan are to better incorporate the broader interests and aspirations of Ngāi Tahu in managing the impacts of farming activities within the Hurunui, Waiau Uwha and Jed catchments. We consider these changes are necessary to:
- give effect to the purpose of the Resource Management Act 1991;
 - give effect to the National Policy Statement for Freshwater 2014;
 - give effect to the Canterbury Regional Policy Statement 2013; and
 - take into account the relevant iwi management plans; and
 - ensure water quality is not further degraded.
- 5.3 These reasons apply to every decision requested in this submission, along with any additional specific reasons listed under each submission point.

Decisions sought:

- 5.4 The specific decisions sought are listed in appendix 1. Text to be deleted is either described narratively or shown as ~~striketrough~~ (except where whole sections are to be replaced). Replacement text is either described narratively or shown as underlined.
- 5.5 We also seek any consequential amendments necessary to give effect to the decisions sought.
- 5.6 **The reasons for our support or opposition are also set out in Appendix 3.**

We DO wish to be heard in support of our submission.

Signature of person authorised to sign on behalf of persons making submission



Rebecca Clements
General Manager |
Te Ao Tūroa
Te Rūnanga o Ngāi Tahu

Date: 31 May 2019

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APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 6 Text in English

The text of the apology in English is as follows:

- 1 The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

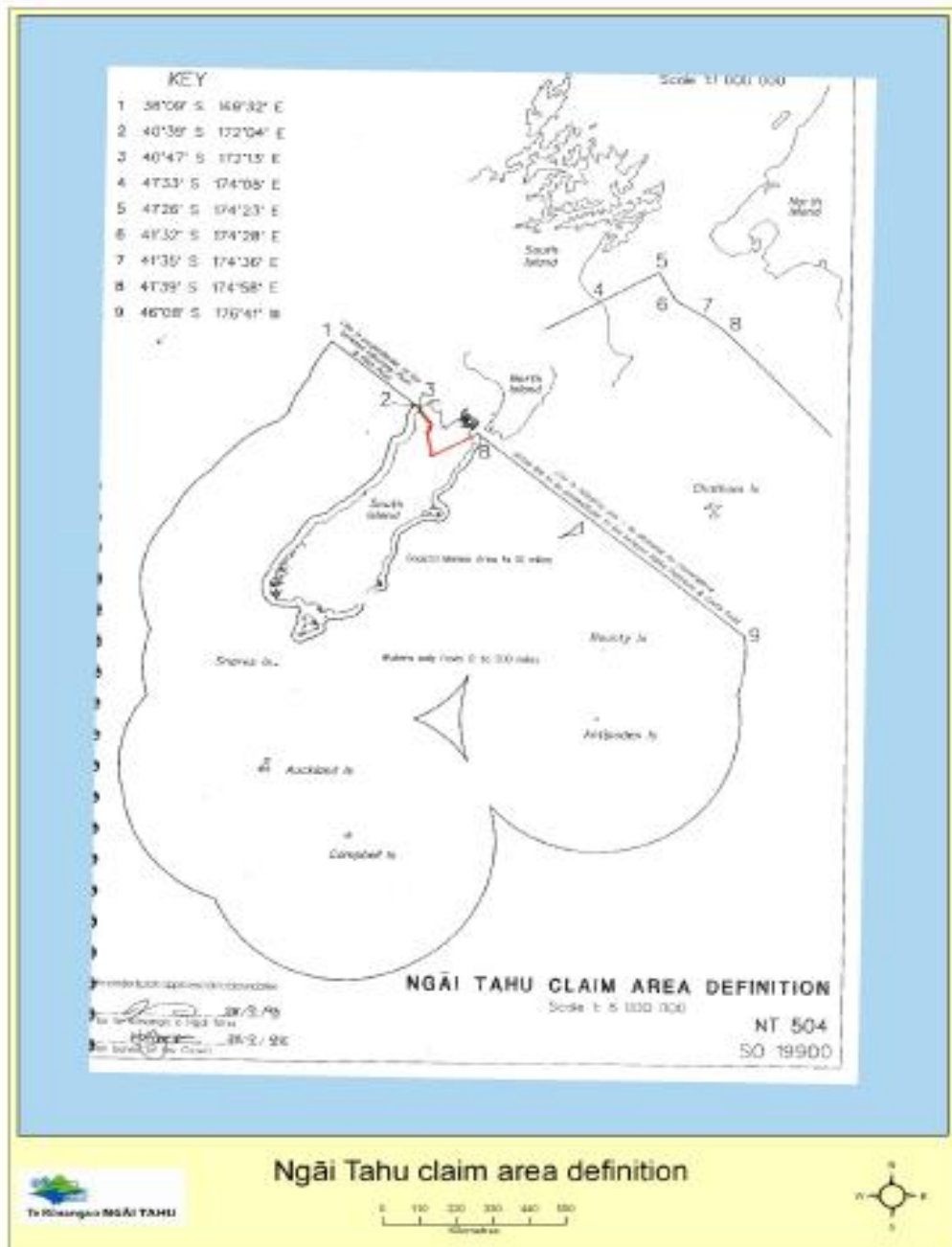
This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.

- 2 The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.
- 3 The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.
- 4 The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.
- 5 The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tirenī!' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').
- 6 The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.
- 7 The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi

Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

- 8 The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.
- 9 Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.”

APPENDIX TWO: NGĀI TAHU TAKIWĀ



APPENDIX 3: SUBMISSION

Proposed Plan Change 1 of the Hurunui and Waiau River Regional Plan - Submission by Te Rūnanga o Ngāi Tahu

31 May 2019

#	Provision	Support or Oppose	Reasons	Decision sought
				<i>Note: consequential amendments are sought as required for all submission points, including consequential amendments to methods and rules as a consequence of submission points on objectives and/or policies. In some instances, submission points on objectives or policies may require new methods including rules.</i>
1	Policy 5.3C :	Support in Part	<p>Te Rūnanga considers that water quality in all catchments needs to be at least maintained and that the Plan Change should result in an improvement in water quality.</p> <p>The section 32 report considers that while cultural use in the Jed Catchment may be compromised the plan change is “unlikely to significantly impact the factors that contribute to the overall mauri” of the river. It is not clear if this statement weighed all the factors listed in the definition in the HWRRP or if it is based on mana whenua assessment of mauri.</p> <p>Any increase in nutrients which results in a water body being unsuitable for cultural use, including mahinga kai, is unacceptable and inconsistent with the Iwi Management Plans. If a waterbody is not suitable to be used for cultural purposes then the mauri of the waterbody is impacted and degraded.</p> <p>Te Rūnanga is concerned that water quality in the Jed Catchment may be degraded as a result of the plan change and therefore current cultural use may be compromised.</p>	<p>The wording of Policy 5.3C may not need to be changed but Te Rūnanga is concerned the plan change is likely to result in a water body being unfit for cultural purposes.</p> <p>Te Rūnanga is also concerned that despite water being unsuitable for cultural purposes the Council considers that the mauri of the waterbody is acceptable.</p> <p>As a starting point the water quality of the Jed, Waiau Uwha and Hurunui Catchments should be maintained.</p>
2	Rule 10.1A	Support in Part	See reason above	As above, while the wording of the rule may not need to change, water quality is at least maintained throughout the

				Jed, Waiau Uwha and Hurunui Catchments.
3	Rule 10.2	Oppose	<p>As drafted the rule is confusing and it is not clear how the requirements in clause (c) and (d) works with new clause (a)(ii).</p> <p>As written, Clause (a)(ii) provides a pathway for dryland farmers to changing landuse to a more intensive landuse (eg dairying) and to enable them to use Ncheck and the schedule 6 lite FEP rather than a full nutrient budget and FEP which covers all areas of a more intensive landuse.</p> <p>Te Rūnanga is concerned that this will lead to underreporting of catchment nutrients and adverse effects on water quality.</p>	<p>Clause (a)(ii) is removed from rule 10.2</p> <p>OR</p> <p>Rule 10.2 is amended so it is clear how every clause in the rules apply to each other and how these limit which dryland farmers landuse changes can continue to use Ncheck and a schedule 6 FEP.</p>
6	Low Intensity Dryland Farming Definition	Support in part	The definition currently reads like a rule. While the intent of the definition is supported it is not considered good planning practice to have definitions work in this manner.	Suggest relooking at how the rule and definitions interrelate to ensure clarity to plan users.
7	Rule 11.1	Oppose in part	There is no consideration of Ngāi Tahu values in the matters of discretion.	Ngāi Tahu values are included as a matter of discretion.
8	Schedule 6: Management Plan for low intensity dryland Farming activities.	Support in Part	<p>Te Rūnanga support the requirement for low intensity dryland farming to meet good management practices as outlined in schedule 6, particularly the practices and wording relating to mahinga kai. However, it is important that this is supported by an on-going and improved relationship between landowners and mana whenua when addressing mahinga kai.</p> <p>While most effects are covered vegetated riparian margins should be of sufficient width to minimise fertiliser loss to the waterbodies.</p>	<p>Fertiliser is included in the following practice:</p> <p>Vegetated riparian margins of sufficient width are maintained to minimise nutrient, <u>fertiliser</u>, sediment and microbial pathogen losses to waterbodies.</p>